

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DANIEL DOYLE,	)	Case No. 8:05CV21
	)	
Plaintiff,	)	
	)	
V.	)	
	)	
LELAND GRASKE,	)	
	)	<b>ORDER</b>
Defendant and	)	
Third-Party Plaintiff,	)	
	)	
V.	)	
	)	
JASON R. HAYNES,	)	
	)	
Third-Party Defendant.	)	

This matter is before the court on defendant and third-party plaintiff Leland Graske's motion to dismiss his third-party complaint claim against third-party defendant Jason R. Haynes, Filing No. 65. Third-party defendant Haynes had earlier filed a motion to dismiss for lack of personal jurisdiction, Filing No. 140, and third-party plaintiff had been granted an extension of time to September 24, 2007, to respond to the motion. The court construes Graske's motion to dismiss as his response. The filing of third-party plaintiff's motion to dismiss renders Haynes's motion moot. There is no opposition to the motion.

Pursuant to Fed. R. Civ. P. 41(a), the plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. Accordingly, the third-party plaintiff is entitled to dismissal without prejudice.

IT IS ORDERED that

1. Third-party plaintiff Leland Graske's unopposed motion to dismiss his third-party complaint claim against third-party defendant Jason R. Haynes, Filing No. 165, is granted.
2. Third-party plaintiff Leland Graske's third-party complaint, Filing No. 114, is dismissed, without prejudice, each party to pay its own costs.
3. Third-party defendant Jason R. Haynes's motion to dismiss, Filing No. 140, is denied as moot.

DATED this 5<sup>th</sup> day of October, 2007.

BY THE COURT

s/ Joseph F. Bataillon  
Chief District Judge